

H.R. 2944
EN BLOC AMENDMENTS TO AMENDMENT IN THE
NATURE OF A SUBSTITUTE
OFFERED BY MR. PALLONE

Page 123, after line 10, insert the following new title:

1 **TITLE X—GENERATION PER-**
2 **FORMANCE STANDARDS,**
3 **ELECTRIC SYSTEM PUBLIC**
4 **BENEFITS FUND, AND RENEW-**
5 **ABLE ENERGY PORTFOLIO**
6 **ROGRAM.**

7 **SEC. 1001. RENEWABLE ENERGY PORTFOLIO STANDARDS.**

8 (a) DEFINITION OF GENERATION FACILITY.—In this
9 section, the term “covered electric generation facility”
10 means a nonhydroelectric facility that generates renewable
11 energy for sale.

12 (b) REQUIRED RENEWABLE ENERGY.—Of the total
13 amount of electricity sold by covered electric generation
14 facilities during a calendar year, the amount generated by
15 emerging renewable energy sources shall be not less
16 than—

- 17 (1) 2.5 percent in 2000;
18 (2) 2.75 percent in 2001;
19 (3) 3 percent in 2002;

- 1 (4) 3.25 percent in 2003;
2 (5) 3.5 percent in 2004;
3 (6) 4.0 percent in 2005;
4 (7) 4.5 percent in 2006;
5 (8) 5 percent in 2007;
6 (9) 5.5 percent in 2008;
7 (10) 6.5 percent in 2009; and
8 (11) 7.5 percent in 2010 and each year there-
9 after.

10 (c) RENEWABLE ENERGY CREDITS.—

11 (1) IDENTIFICATION OF ENERGY SOURCES.—

12 The Commission shall establish standards and pro-
13 cedures under which a covered electric generation fa-
14 cility shall certify to a purchaser of electricity—

15 (A) the amount of the electricity that is
16 generated by a renewable energy source; and

17 (B) the amount of the electricity that is
18 generated by a source other than a renewable
19 energy source.

20 (2) ISSUANCE OF RENEWABLE ENERGY CRED-

21 ITS.—Not later than April 1 of each year, beginning
22 in the year 2001, the Commission shall issue to a
23 covered electric generation facility 1 renewable en-
24 ergy credit for each megawatt-hour of electricity sold
25 by the covered electric generation facility in the pre-

1 ceding calendar year that was generated by a renew-
2 able source.

3 (3) SUBMISSION OF RENEWABLE ENERGY
4 CREDITS.—Not later than July 1 of each year, a
5 covered electric generation facility shall submit cred-
6 its to the Commission in an amount equal to the
7 total number of megawatt-hours of electricity sold by
8 the covered electric generation facility in the pre-
9 ceding year multiplied by the applicable renewable
10 energy source requirement under subsection (a).

11 (4) USE OF RENEWABLE ENERGY CREDITS.—

12 (A) TIME FOR USE.—A renewable energy
13 credit shall be used for the calendar year for
14 the renewable energy credit is issued.

15 (B) PERMITTED USES.—Until July 1 of
16 the year in which a renewable energy credit was
17 issued, a covered electric generation facility
18 may—

19 (i) use the renewable energy credit to
20 make a submission to the Commission
21 under paragraph (3); or

22 (ii) on notice to the Commission, sell
23 or otherwise transfer a renewable energy
24 credit to another covered electric genera-
25 tion facility.

1 (d) RECORDKEEPING.—The Commission shall main-
2 tain records of all renewable energy credits issued and all
3 credits sold or exchanged.

4 (e) RENEWABLE ENERGY CREDIT COST CAP.—Be-
5 ginning with the year 2000, the Commission shall offer
6 renewable energy credits for sale. The Commission shall
7 charge 2.5 cents for each Renewable Energy Credit sold
8 during calendar year 2000. On January 1 of each fol-
9 lowing year, the Commission shall adjust for inflation,
10 based on the Consumer Price Index, the price charged per
11 credit for that calendar year. The Commission shall de-
12 posit in a separate account the amount received from a
13 sale under this subsection. Amounts in the separate ac-
14 count shall be available, without further appropriation, to
15 the Secretary of Energy to be used for purposes of pro-
16 viding assistance for research and development of cleaner
17 burning fuels and renewable energy.

18 (f) PENALTIES.—The Commission may bring an ac-
19 tion in United States district court to impose a civil pen-
20 alty on any person that fails to comply with subsection
21 (a). A person that fails to comply with a requirement to
22 submit renewable energy credits under subsection (b)(3)
23 shall be subject to a civil penalty of not more than 3 times
24 the estimated national average market value (as deter-

1 mined by the Commission) for the calendar year concerned
2 of that quantity of renewable energy credits.

3 (g) POWERS.—The Commission may promulgate
4 such regulations, conduct such investigations, and take
5 such other actions as are necessary or appropriate to im-
6 plement and obtain compliance with this section and regu-
7 lations promulgated under this section.

8 **SEC. 1002. NATIONAL ELECTRIC SYSTEM PUBLIC BENEFITS**
9 **BOARD.**

10 (a) ESTABLISHMENT.—The Secretary shall establish
11 a National Electric System Public Benefits Board to carry
12 out the functions and responsibilities described in this sec-
13 tion.

14 (b) MEMBERSHIP.—The Board shall be composed
15 of—

16 (1) 1 representative of the Commission ap-
17 pointed by the Commission;

18 (2) 2 representatives of the Secretary appointed
19 by the Secretary;

20 (3) 2 persons nominated by the national organi-
21 zation representing State regulatory commissioners
22 and appointed by the Secretary;

23 (4) 1 person nominated by the national organi-
24 zation representing State utility consumer advocates
25 and appointed by the Secretary;

1 (5) 1 person nominated by the national organi-
2 zation representing State energy offices and ap-
3 pointed by the Secretary;

4 (6) 1 person nominated by the national organi-
5 zation representing energy assistance directors and
6 appointed by the Secretary; and

7 (7) 1 representative of the Environmental Pro-
8 tection Agency appointed by the Administrator.

9 (c) CHAIRPERSON.—The Secretary shall select a
10 member of the Board to serve as Chairperson of the
11 Board.

12 (d) MANAGER.—

13 (1) APPOINTMENT.—The Board shall by con-
14 tract appoint an electric systems public benefits
15 manager for a term of not more than 3 years, which
16 term may be renewed by the Board.

17 (2) COMPENSATION.—The compensation and
18 other terms and conditions of employment of the
19 manager shall be determined by a contract between
20 the Board and the individual or the other entity ap-
21 pointed as manager.

22 (3) FUNCTIONS.—The manager shall—

23 (A) monitor the amounts in the Fund;

1 (B) receive, review, and make rec-
2 ommendations to the Board regarding applica-
3 tions from States under section 6(b); and

4 (C) perform such other functions as the
5 Board may require to assist the Board in car-
6 rying out its duties under this Act.

7 **SEC. 1003. NATIONAL ELECTRIC SYSTEM PUBLIC BENEFITS**
8 **FUND.**

9 (a) ESTABLISHMENT.—

10 (1) IN GENERAL.—The Board shall establish an
11 account or accounts at one or more financial institu-
12 tions, which account or accounts shall be known as
13 the “National Electric System Public Benefits
14 Fund”, consisting of amounts deposited in the fund
15 under subsection (c).

16 (2) STATUS OF FUND.—The wires charges col-
17 lected under subsection (c) and deposited in the
18 Fund—

19 (A) shall constitute electric system reve-
20 nues and shall not constitute funds of the
21 United States;

22 (B) shall be held in trust by the manager
23 of the Fund solely for the purposes stated in
24 subsection (b); and

1 (C) shall not be available to meet any obli-
2 gations of the United States.

3 (b) USE OF FUND.—

4 (1) FUNDING OF PUBLIC PURPOSE PRO-
5 GRAMS.—Amounts in the Fund shall be used by the
6 Board to provide matching funds to States for the
7 support of State public purpose programs relating
8 to—

9 (A) renewable energy sources;

10 (B) universal electric service;

11 (C) affordable electric service;

12 (D) energy conservation and efficiency;

13 (E) research and development in areas de-
14 scribed in subparagraphs (A) through (D), or

15 (F) disconnections during periods of ex-
16 treme cold or heat.

17 (2) DISTRIBUTION.—

18 (A) IN GENERAL.—Except for amounts
19 needed to pay costs of the Board in carrying
20 out its duties under this section, the Board
21 shall instruct the manager of the Fund to dis-
22 tribute all amounts in the Fund to States to
23 fund public purpose programs under paragraph
24 (1).

25 (B) FUND SHARE.—

1 (i) IN GENERAL.—Subject to clause
2 (iii), the Fund share of a public purpose
3 program funded under paragraph (1) shall
4 be 50 percent.

5 (ii) PROPORTIONATE REDUCTION.—
6 To the extent that the amount of matching
7 funds requested by States exceeds the
8 maximum projected revenues of the Fund,
9 the matching funds distributed to the
10 States shall be reduced by an amount that
11 is proportionate to each State's annual
12 consumption of electricity compared to the
13 Nation's aggregate annual consumption of
14 electricity.

15 (iii) ADDITIONAL STATE FUNDING.—
16 A State may apply funds to public purpose
17 programs in addition to the amount of
18 funds applied for the purpose of matching
19 the Fund share.

20 (3) PROGRAM CRITERIA.—The Board shall rec-
21 ommend eligibility criteria for public benefits pro-
22 grams funded under this section for approval by the
23 Secretary.

24 (4) APPLICATION.—Not later than August 1 of
25 each year beginning in 2000, a State seeking match-

1 ing funds for the following year shall file with the
2 Board, in such form as the Board may require, an
3 application—

4 (A) certifying that the funds will be used
5 for an eligible public purpose program; and

6 (B) stating the amount of State funds ear-
7 marked for the program.

8 (c) WIRES CHARGE.—

9 (1) DETERMINATION OF NEEDED FUNDING.—

10 Not later than August 1 of each year, the Board
11 shall determine and inform the Commission of the
12 aggregate amount of wires charges that will be nec-
13 essary to be paid into the Fund to pay matching
14 funds to States and pay the operating costs of the
15 Board in the following year.

16 (2) IMPOSITION OF WIRES CHARGE.—

17 (A) IN GENERAL.—Not later than Decem-
18 ber 15 of each year, the Commission shall im-
19 pose a nonbypassable, competitively neutral
20 wires charge to be paid directly into the Fund
21 by the operator of the wire on electricity carried
22 through the wire (measured as it exits the
23 busbar at a generation facility) that affects
24 interstate commerce.

1 (B) AMOUNT.—The wires charge shall be
2 set at a rate equal to the lesser of—

3 (i) 2.0 mills per kilowatt-hour; or

4 (ii) a rate that is estimated to result
5 in the collection of an amount of wires
6 charges that is as nearly as possible equal
7 to the amount of needed funding deter-
8 mined under paragraph (1),

9 reduced by 50 percent of the amount of any wire
10 charge imposed on such electricity under State law
11 that is used by a State for State public purpose pro-
12 gram described in subsection (b)(1).

13 (3) DEPOSIT IN THE FUND.—The wires charge
14 shall be paid by the operator of the wire directly into
15 the Fund at the end of each month during the cal-
16 endar year for distribution by the electric systems
17 public benefits manager under section 5.

18 (4) PENALTIES.—The Commission may assess
19 against a wire operator that fails to pay a wires
20 charge as required by this subsection a civil penalty
21 in an amount equal to not more than the amount of
22 the unpaid wires charge.

23 (d) AUDITING.—

24 (1) IN GENERAL.—The Fund shall be audited
25 annually by a firm of independent certified public

1 accountants in accordance with generally accepted
2 auditing standards.

3 (2) ACCESS TO RECORDS.—Representatives of
4 the Secretary and the Commission shall have access
5 to all books, accounts, reports, files, and other
6 records pertaining to the Fund as necessary to fa-
7 cilitate and verify the audit.

8 (3) REPORTS.—

9 (A) IN GENERAL.—A report on each audit
10 shall be submitted to the Secretary, the Com-
11 mission, and the Secretary of the Treasury, who
12 shall submit the report to the President and
13 Congress not later than 180 days after the
14 close of the fiscal year.

15 (B) REQUIREMENTS.—An audit report
16 shall—

17 (i) set forth the scope of the audit;

18 and

19 (ii) include—

20 (I) a statement of assets and li-
21 abilities, capital; and surplus or def-
22 icit;

23 (II) a statement of surplus or
24 deficit analysis;

1 (III) a statement of income and
2 expenses;

3 (IV) any other information that
4 may be considered necessary to keep
5 the President and Congress informed
6 of the operations and financial condi-
7 tion of the Fund; and

8 (V) any recommendations with
9 respect to the Fund that the Sec-
10 retary or the Commission may have.

11 **SEC. 1004. DISCLOSURE REQUIREMENTS.**

12 Title II of the Public Utility Regulatory Policies Act
13 of 1978 is amended by adding the following new section
14 at the end thereof:

15 **“SEC. 214. DISCLOSURE REQUIREMENTS.**

16 “(a) DEFINITIONS.—In this section:

17 “(1) EMISSIONS DATA.—The term “emissions
18 data” means the type and amount of each pollutant
19 emitted by a generation facility in generating elec-
20 tricity.

21 “(2) GENERATION DATA.—The term “genera-
22 tion data” means the type of fuel (such as coal, oil,
23 nuclear energy, or solar power) used by a generation
24 facility to generate electricity.

1 “(b) DISCLOSURE SYSTEM.—Not later than January
2 1, 2001, the Secretary, in consultation with the Commis-
3 sion, the Federal Trade Commission, the Administrator
4 of the Environmental Protection Agency, the Adminis-
5 trator of the Food and Drug Administration, and the Ad-
6 ministrator of the Energy Information Administration
7 shall prescribe a rule establishing a system of disclosure
8 that—

9 “(1) enables retail consumers to knowledgeably
10 compare, prior to purchase, retail electric service of-
11 ferings, including comparisons based on generation
12 source portfolios, emissions data, and price terms;
13 and

14 “(2) considers such factors as—

15 “(A) cost of implementation;

16 “(B) confidentiality of information; and

17 “(C) flexibility.

18 The rule under this section shall set forth the form, con-
19 tent, timing, and frequency of the disclosure required.
20 Such rule shall also require such disclosures in connection
21 with wholesale sales of electric energy, and such systems
22 of tracking sales of electric energy, as may be necessary
23 to carry out the requirements of this section.

24 “(c) REGULATION.—In accordance with the system
25 established under subsection (b), each person selling elec-

1 tric energy shall disclose to its customers emissions and
2 generation data for the electric energy sold and informa-
3 tion about whether the service is firm or interruptible.
4 When a seller has obtained electricity from more than 1
5 source that comprises 2 percent or more of the seller's
6 energy portfolio, the disclosure shall include the percent-
7 age (accurate to within 1 percent) breakdown of the var-
8 ious sources of generation relied upon by the seller. When
9 a seller has obtained electricity from a power pool, this
10 fact shall be disclosed, and the seller shall disclose the ge-
11 neric categories (with percentages where applicable) of
12 power dispatched by the pool during the previous billing
13 cycle.

14 “(d) TIMELINESS OF DISCLOSURE.—Each electric
15 utility shall include the disclosures required under this sec-
16 tion in all written communications describing an energy
17 product sent directly to consumers, including written of-
18 fers and direct mail advertisements, and in materials ap-
19 pearing at internet sites. Each electric utility shall ensure
20 that the required disclosures are sent directly to a con-
21 sumer (1) prior to the consumer's acceptance of an offer
22 of an energy product, or (2) in a post-sale mailing that
23 begins a period during which the consumer may withdraw
24 that acceptance. On a quarterly basis, such utility shall

1 include the disclosures required under subsection (c) in
2 each of its customer's bills or in a separate mailing.

3 “(e) FORMAT OF DISCLOSURE.—In promulgating the
4 rules required under this section, the Secretary shall de-
5 velop standard formats for disclosure of energy product
6 information required under this section. Such formats
7 shall include a graphic representation of the characteris-
8 ties of the energy product being offered or the supplier's
9 total energy portfolio, as appropriate, and a comparison
10 with regional averages. The Secretary, in consultation
11 with the Administrator of the Environmental Protection
12 Agency, shall determine, and address in rules to be issued
13 under this section, whether and how default generation
14 source and emissions values may be used in disclosure
15 statements as a proxy for that portion of the supplier's
16 energy portfolio that cannot be identified from the infor-
17 mation provided under subsection (f).

18 “(f) DISCLOSURE TO WHOLESALE CUSTOMERS.—In
19 every sale of electricity for resale, the seller shall provide
20 to the purchaser such information respecting generation
21 source and emissions characteristics as the Secretary may
22 require by rules under this section. This information may
23 include, but shall not be limited to, information from re-
24 gional system operators and administrators on wholesale
25 transactions, transactions in regional spot markets and

1 energy imported from other control areas; information
2 from wholesale and retail power marketing companies on
3 transactions with other sellers; and information from gen-
4 erating companies on the amount of energy generated at
5 each plant, the environmental characteristics of that en-
6 ergy and the amount of energy sold. The Secretary shall
7 have the authority to require all sellers to participate in
8 a tracking system designed to provide customers with com-
9 prehensive environmental information. Notwithstanding
10 the provisions of the Energy Supply and Environmental
11 Coordination Act of 1974, the Secretary shall determine
12 what information shall be kept confidential and what in-
13 formation shall be made available to the public.

14 “(g) ENERGY INFORMATION ADMINISTRATION.—The
15 Administrator of the Energy Information Administration
16 shall make available to the general public, on the same
17 basis as he now reports such data from public utilities,
18 electric power, fuel use and environmental data, including
19 respondent-level data, from all survey respondents in the
20 electric generation industry.

21 “(h) AUTHORITY TO OBTAIN BOOKS AND
22 RECORDS.—Authority to obtain information under section
23 11 of the Energy Supply and Environmental Coordination
24 Act of 1974 (15 U.S.C. 796) is available to the Secretary
25 to administer this section and to the Federal Trade Com-

1 mission to enforce this section. The Secretary shall take
2 appropriate action to protect the confidentiality of com-
3 petitively sensitive information.

4 “(i) PROHIBITED ACTS AND ENFORCEMENT.—It is
5 an unfair or deceptive act or practice in or affecting com-
6 merce (within the meaning of section 5(a)(1) of the Fed-
7 eral Trade Commission Act (15 U.S.C. 45(a)(1)) for any
8 person to fail to provide information required under the
9 rules issued under this section or to provide false or mis-
10 leading information with respect to disclosures required by
11 this section or the rules issued under this section.

12 “(j) STATE AUTHORITY.—Nothing in this section
13 shall preclude or deny the right of any State or political
14 subdivision thereof to adopt or enforce any law or rule pre-
15 scribing the form, content, or timing of supplier disclosure
16 in addition to the requirements of this section.

17 “(k) REGULATIONS.—The Secretary may promulgate
18 such regulations, conduct such investigations, and take
19 such other actions as are necessary or appropriate to im-
20 plement and obtain compliance with this section and regu-
21 lations promulgated under this section.”.

22 **SEC. 1005. STATE AND LOCAL LAW.**

23 Nothing in this Act precludes a State or political sub-
24 division of a State from adopting and enforcing—

1 (1) any standard or limitation respecting emis-
2 sions of air pollutants; or

3 (2) any requirement respecting control or
4 abatement of air pollution;

5 except that a State or political subdivision may not adopt
6 or enforce any emission standard or limitation that is less
7 stringent than the requirements imposed under this Act.

8 **SEC. 1006. ALLOWANCE PROGRAM FOR CERTAIN AIR POL-**
9 **LUTANTS.**

10 (a) IN GENERAL.—Part III of the Federal Power Act
11 is amended by redesignating sections 320 and 321 as sec-
12 tions 323 and 324 respectively and by inserting the fol-
13 lowing new sections after section 319:

14 **“SEC. 320. GENERATION PERFORMANCE STANDARDS AND**
15 **TONNAGE CAPS.**

16 “(a) OXIDES OF NITROGEN.—

17 “(1) GENERATION PERFORMANCE STANDARD.—

18 For each covered period, the Commission shall cal-
19 culate a generation performance standard for oxides
20 of nitrogen from covered electric generating units in
21 the applicable region. The standard shall be equal to
22 the statutory tonnage cap for the covered period, as
23 set forth in paragraph (2), divided by the Commis-
24 sion’s estimate (under section 322(a)) of total elec-
25 tric generation from such units in the applicable re-

1 gion. The Commission shall publish such standard
 2 (expressed in pounds per megawatt hour) at least 30
 3 days prior to the beginning of the covered period
 4 concerned.

5 “(2) STATUTORY TONNAGE CAP.—The statu-
 6 tory tonnage cap (expressed in millions of tons) for
 7 emissions of oxides of nitrogen from covered electric
 8 generating units in the applicable region for each
 9 covered period shall be as follows:

Covered Periods	Applicable Region	Statutory tonnage cap (million tons)
May 1–September 30, 2003	22 Eastern States	0.54
May 1–September 30, 2004	22 Eastern States	0.54
Jan. 1–December 31, 2005 and each year thereafter	Continental US	1.66

10 “(3) OZONE EPISODES.—During each period
 11 coinciding with exceedances of the National Ambient
 12 Air Quality Standard for ozone, promulgated by the
 13 Administrator of the Environmental Protection
 14 Agency under the Clean Air Act (and during the 8
 15 hours preceding such exceedances), each covered
 16 unit with an actual emission rate greater than the
 17 generation performance standard shall be required
 18 to adjust its reported actual emissions under section
 19 321(b) by a factor of up to 3, depending on the
 20 unit’s distance from the exceedance. Units affected
 21 by this subsection may meet their obligations under
 22 section 321 either by emissions reductions at the af-

1 fected unit, or by surrendering allowances equal to
2 the difference between actual emissions and the
3 emission limitation provided in this subsection.

4 “(b) FINE PARTICULATE MATTER.—

5 “(1) GENERATION PERFORMANCE STANDARD.—

6 In order to reduce concentrations of sulfate fine particulate matter, for each calendar year in a covered
7 period, the Commission shall calculate a generation
8 performance standard for sulfur oxides from covered
9 electric generating units. The standard shall be
10 equal to the statutory tonnage cap for the covered
11 calendar year, as set forth in paragraph (2), divided
12 by the Commission’s estimate (under section 322(a))
13 of total electric generation from such units in the
14 applicable region. The Commission shall publish
15 such standard (expressed in pounds per megawatt
16 hour) at least 30 days prior to the beginning of the
17 covered year concerned.

18 “(2) STATUTORY TONNAGE CAP.—The statu-
19 tory tonnage cap (expressed in millions of tons) for
20 fine particulate matter as measured by emissions of
21 sulfur oxides from covered electric generating units
22 in the continental United States for a covered period
23 shall be as follows:
24

Covered Period	Statutory tonnage cap (million tons)
2004 and thereafter	4.0

1 “(c) CARBON DIOXIDE.—

2 “(1) GENERATION PERFORMANCE STANDARD.—

3 In order to reduce concentrations of carbon dioxide,
 4 for each covered calendar year, the Commission shall
 5 calculate a generation performance standard for car-
 6 bon dioxide from covered electric generating units.
 7 The standard shall be equal to the statutory tonnage
 8 cap for the covered period, as set forth in paragraph
 9 (2) divided by the Commission’s estimate (under sec-
 10 tion 322(a)) of total electric generation from such
 11 units in the applicable region. The Commission shall
 12 publish such standard (expressed in pounds per
 13 megawatt hour) at least 30 days prior to the begin-
 14 ning of the covered period concerned.

15 “(2) STATUTORY TONNAGE CAP.—The statu-
 16 tory tonnage cap for carbon dioxide shall be 1.914
 17 billion tons for the calendar year 2005 and each cal-
 18 endar year thereafter.

19 “(d) MERCURY EMISSION REDUCTIONS.—In order to
 20 reduce concentrations of mercury, for each covered cal-
 21 endar year, the Commission shall determine the emission
 22 levels for mercury from covered electric generating units
 23 during calendar year 1990 and promulgate regulations re-

1 quiring phased reductions from such level during calendar
2 years 2000 through 2004 such that by calendar year 2005
3 (and thereafter) no such unit will emit more than 50 per-
4 cent of the amount of mercury emitted by that unit during
5 calendar year 1990, and by calendar year 2010 (and
6 thereafter) no such unit will emit more than 10 percent
7 of the amount of mercury emitted by that unit during cal-
8 endar year 1990, with periodic review and study of tech-
9 nical and cost feasibility, based on progress in improving
10 mercury control technology and the ability of energy effi-
11 ciency and alternative energy sources to assist in meeting
12 the 90 percent reduction target.

13 **“SEC. 321. ALLOCATION AND TRADING OF ALLOWANCES;**
14 **COMPLIANCE.**

15 “(a) ALLOCATION AND TRADING OF ALLOWANCES.—

16 “(1) IN GENERAL.—For each covered period,
17 the Commission shall allocate allowances for each
18 pollutant for which a tonnage cap has been estab-
19 lished pursuant to section 320, among covered units
20 in the applicable region by multiplying the genera-
21 tion performance standard for that covered period
22 for each such air pollutant by such unit’s electric
23 generation during the covered period.

24 “(2) ENERGY CONSERVATION.—The Commis-
25 sion shall also allocate allowances for such air pollut-

1 ants to each person in the applicable region who
2 demonstrates to the Commission (in accordance with
3 the measurement and verification protocol specified
4 in paragraph (4)) that such person has achieved a
5 reduction in gross electric energy demand during a
6 covered period, as certified by an independent body
7 approved by the Commission. The allowances allo-
8 cated to any such person shall be determined by
9 multiplying the generation performance standard for
10 the air pollutant concerned for the covered period by
11 such reduction in electric energy demand. Only one
12 person may apply for allowances for any particular
13 energy conservation action.

14 “(3) CARRYOVER AND TRADING OF ALLOW-
15 ANCES.—Allowances allocated to any person for any
16 air pollutant for any covered period that are not
17 used to demonstrate compliance with subsection (b)
18 for that pollutant during any covered period may be
19 retained and used to demonstrate compliance with
20 such requirements by any person in a subsequent
21 covered period. Such allowances may be transferred
22 by the person to whom allocated to any other per-
23 son. Any person to whom such allowances have been
24 transferred may use the allowances in the covered
25 period or in a subsequent covered period to dem-

1 onstrate compliance with subsection (b) or may
2 transfer such allowances to any other person for
3 such purposes.

4 “(4) MEASUREMENT AND VERIFICATION PRO-
5 TOCOL.—The Environmental Protection Agency, in
6 consultation with the Department of Energy, shall
7 develop a measurement and verification protocol that
8 provides for a reliable measure of energy savings
9 and that provides the necessary format for con-
10 verting measured and verified energy savings into a
11 reliable measure of reductions in power generation
12 related emissions of air pollutants as specified in
13 subsection (a)(1). Such measurement and verifica-
14 tion protocol may be derived from or based on the
15 International Measurement and Verification Protocol
16 or the New Jersey Measurement and Verification
17 Protocol, as appropriate.

18 “(b) COMPLIANCE WITH ALLOWANCE LIMITS.—For
19 each covered period, the owner or operator of each covered
20 unit in the applicable region shall surrender to the Com-
21 mission a number of allowances for oxides of nitrogen, sul-
22 fur oxides, and the pollutants for which a statutory ton-
23 nage cap has been established pursuant to section 320,
24 equal to the total tonnage of each such air pollutant emit-
25 ted during the covered period. Emissions shall be deter-

1 mined based on continuous monitoring approved by the
2 Administrator. The Administrator may permit the average
3 rate of emissions from a covered unit over any covered
4 period to exceed the generation performance standard if
5 the generating plant has a sufficient quantity of emissions
6 credits.

7 “(c) EXCESS EMISSIONS.—The owner or operator of
8 any covered unit that emits any pollutant for which a stat-
9 utory tonnage cap has been established pursuant to sec-
10 tion 320, for a covered period in any calendar year in ex-
11 cess of the allowances for such air pollutant that the owner
12 or operator holds for use for the unit for the covered pe-
13 riod shall be liable for the payment of an excess emissions
14 penalty, and shall be liable to offset the excess emissions
15 by an equal tonnage amount of such air pollutant in the
16 following covered period or such other period as the Com-
17 mission shall prescribe. The excess emissions penalty shall
18 be calculated on the basis of the number of tons emitted
19 in excess of the total number of allowances held, multiplied
20 by the applicable penalty baseline, indexed by inflation
21 under rules promulgated by the Commission. The penalty
22 baseline shall be \$5,000 per ton for oxides of nitrogen and
23 sulfur oxides, and \$100 per ton for carbon dioxide. The
24 Commission shall, by rule in consultation with the Admin-
25 istrator, establish penalties of equal effectiveness for other

1 pollutants for which a statutory tonnage cap has been es-
2 tablished pursuant to section 320. In the case of mercury,
3 the owner or operator of any covered unit that emits mer-
4 cury in excess of the emissions limit established for that
5 unit under section 320(d) shall be liable for an excess
6 emissions penalty in the amount of \$2,500 for each ton
7 emitted in excess of the limit established under section
8 320(d). Any such penalty shall be due and payable without
9 demand to the Commission. Excess emissions penalties
10 and offsets shall be determined and administered in ac-
11 cordance with regulations to be promulgated by the Com-
12 mission within 6 months after the enactment of this sec-
13 tion.

14 **“SEC. 322. GENERAL PROVISIONS RELATING TO SECTIONS**
15 **320 THROUGH 321.**

16 “(a) ESTIMATE OF ELECTRIC GENERATION.—For
17 each covered period, the Commission shall publish the
18 Commission’s estimate of the total electric generation by
19 covered electric generating units in the applicable region.
20 Such estimate shall be computed based on total electric
21 energy generation from all covered units during the cur-
22 rent year or covered period plus the projected growth (as
23 determined by the Secretary of Energy) in electric energy
24 generation and expected verifiable electric energy con-
25 servation for the covered period. The Commission shall

1 publish such estimate at least 30 days prior to the begin-
2 ning of the applicable period for which the estimate is
3 made.

4 “(b) TRANSFER.—If the President finds that any
5 functions and duties vested in the Commission under sec-
6 tions 320 or 321 or any combination thereof can be more
7 efficiently carried out by another department, agency, or
8 instrumentality of the United States, the President shall
9 transfer such functions and duties in accordance with such
10 finding. In any such case, such other department, agency,
11 or instrumentality shall be substituted for the Commission
12 for purposes of suits under subsection (c).

13 “(c) CITIZEN SUIT.—Except as provided in para-
14 graph (4) of this subsection, any person may commence
15 a civil action on his own behalf—

16 “(1) against any person (including (i) the
17 United States, and (ii) any other governmental in-
18 strumentality or agency to the extent permitted by
19 the Eleventh Amendment to the Constitution) who is
20 alleged to have violated (if there is evidence that the
21 alleged violation has been repeated) or to be in viola-
22 tion of (A) any requirement of section 320 or 321
23 or (B) an order issued by the Commission or a State
24 with respect to such requirements, and

1 “(2) against the Commission where there is al-
2 leged a failure of the Commission to perform any act
3 or duty under section 320, 321, or 322 which is not
4 discretionary with the Commission.

5 The district courts shall have jurisdiction, without regard
6 to the amount in controversy or the citizenship of the par-
7 ties, to enforce compliance with the requirements of sec-
8 tions 320 and 321 or to order the Commission to perform
9 such act or duty, as the case may be, and to apply any
10 appropriate civil penalties (except for actions under para-
11 graph (2)). The district courts of the United States shall
12 have jurisdiction to compel (consistent with paragraph (2)
13 of this subsection) agency action unreasonably delayed. In
14 any such action for unreasonable delay, notice to the Com-
15 mission shall be provided 180 days before commencing
16 such action.

17 “(3) No action may be commenced—

18 “(A) under paragraph (1)—

19 “(i) prior to 60 days after the plain-
20 tiff has given notice of the violation (I) to
21 the Commission, (II) to the State in which
22 the violation occurs, and (III) to any al-
23 leged violator of the standard, limitation,
24 or order, or

1 “(ii) if the Commission or State has
2 commenced and is diligently prosecuting a
3 civil action in a court of the United States
4 or a State to require compliance with the
5 standard, limitation, or order, but in any
6 such action in a court of the United States
7 any person may intervene as a matter of
8 right.

9 “(B) under paragraph (2) prior to 60 days
10 after the plaintiff has given notice of such ac-
11 tion to the Commission.

12 “(4) The court in issuing any final order in any
13 action brought pursuant to paragraph (1), may
14 award costs of litigation (including reasonable attor-
15 ney and expert witness fees) to any party, whenever
16 the court determines such award is appropriate.”.

17 (b) DEFINITIONS.—Section 3 of the Federal Power
18 Act is amended by adding the following after paragraph
19 (24):

20 “(25) For oxides of nitrogen, the terms ‘appli-
21 cable region’ and ‘covered period’ refer to the appli-
22 cable regions and each of the covered periods speci-
23 fied in the chart in section 320(a)(2). For fine par-
24 ticulate matter and any other pollutant for which a
25 tonnage cap has been established pursuant to section

1 320, the term ‘applicable region’ means the conti-
2 nental United States. For fine particulate matter,
3 the term ‘covered period’ means each of the periods
4 specified as covered periods in the chart in section
5 320(b)(2).

6 “(26) The term ‘covered electric generating
7 unit’ means an electric generating unit (other than
8 a nuclear facility) in the applicable region with a
9 nameplate capacity of 15 MWe or greater.”.

10 Page 120, strike line7 and all that follows down
11 through line 19 on page 121 and insert:

12 **SEC. 1007. NET METERING.**

13 (a) AMENDMENT OF PURPA.—The Public Utility
14 Regulatory Policies Act of 1978 is amended by adding the
15 following new section after section 214:

16 **“SEC. 215. NET METERING.**

17 “(a) DEFINITIONS.—For purposes of this section—

18 “(1) The term ‘eligible on-site generating facil-
19 ity’ means a facility on the site of a residential elec-
20 tric consumer with a maximum generating capacity
21 of 100 kilowatts or less that is fueled by solar or
22 wind energy or a facility on the site of a commercial
23 electric consumer with a maximum generating ca-
24 pacity of 250 kilowatts or less that is fueled solely
25 by a renewable energy resource.

1 “(2) The term ‘renewable energy resource’
2 means solar energy, wind energy, biomass, and fuel
3 cells.

4 “(3) The term ‘net metering service’ means
5 service to an electric consumer under which elec-
6 tricity generated by that consumer from an eligible
7 on-site generating facility and delivered to the dis-
8 tribution system through the same meter through
9 which purchased electricity is received may be used
10 to offset electricity provided by the retail electric
11 supplier to the electric consumer during the applica-
12 ble billing period so that an electric consumer is
13 billed only for the net electricity consumed during
14 the billing period, but in no event shall the net be
15 less than zero during any calendar year.

16 “(b) REQUIREMENT TO PROVIDE NET METERING
17 SERVICE.—Each retail electric supplier shall make avail-
18 able upon request net metering service to any retail elec-
19 tric consumer that the supplier currently serves or solicits
20 for service.

21 “(c) RATES AND CHARGES.—

22 “(1) IDENTICAL CHARGES.—A retail electric
23 supplier—

24 “(A) shall charge the owner or operator of
25 an on-site generating facility rates and charges

1 that are identical to those that would be
2 charged other retail electric customers of the
3 electric company in the same rate class; and

4 “(B) shall not charge the owner or oper-
5 ator of an on-site generating facility any addi-
6 tional standby, capacity, interconnection, or
7 other rate or charge.

8 “(2) MEASUREMENT.—A retail electric supplier
9 that supplies electricity to the owner or operator of
10 an on-site generating facility shall measure the
11 quantity of electricity produced by the on-site facility
12 and the quantity of electricity consumed by the
13 owner or operator of an on-site generating facility
14 during a billing period in accordance with normal
15 metering practices.

16 “(3) ELECTRICITY SUPPLIED EXCEEDING ELEC-
17 TRICITY GENERATED.—If the quantity of electricity
18 supplied by a retail electric supplier during a billing
19 period exceeds the quantity of electricity generated
20 by an on-site generating facility and fed back to the
21 electric distribution system during the billing period,
22 the supplier may bill the owner or operator for the
23 net quantity of electricity supplied by the retail elec-
24 tric supplier, in accordance with normal metering
25 practices.

1 “(4) ELECTRICITY GENERATED EXCEEDING
2 ELECTRICITY SUPPLIED.—If the quantity of elec-
3 tricity generated by an on-site generating facility
4 during a billing period exceeds the quantity of elec-
5 tricity supplied by the retail electric supplier during
6 the billing period—

7 “(A) the retail electric supplier may bill
8 the owner or operator of the on-site generating
9 facility for the appropriate charges for the bill-
10 ing period in accordance with paragraph (2);
11 and

12 “(B) the owner or operator of the on-site
13 generating facility shall be credited for the ex-
14 cess kilowatt-hours generated during the billing
15 period, with the kilowatt-hour credit appearing
16 on the bill for the following billing period.

17 “(5) UNUSED CREDITS.—At the beginning of
18 each calendar year, any unused kilowatt-hour credits
19 accumulated by an owner or operator of an on-site
20 generating facility during the previous calendar year
21 shall expire without compensation to the owner or
22 operator of an on-site generating facility.

23 “(d) SAFETY AND PERFORMANCE STANDARDS.—(1)
24 An eligible on-site generating facility and net metering
25 system used by a retail electric consumer shall meet all

1 applicable safety, performance, reliability, and inter-
2 connection standards established by the National Elec-
3 trical Code, the Institute of Electrical and Electronics En-
4 gineers, and Underwriters Laboratories.

5 “(2) The Commission, after consultation with State
6 regulatory authorities and nonregulated local distribution
7 systems and after notice and opportunity for comment,
8 may adopt, by rule, additional control and testing require-
9 ments for on-site generating facilities and net metering
10 systems that the Commission determines are necessary to
11 protect public safety and system reliability.

12 “(e) INTERCONNECTION STANDARDS.—(1) The Com-
13 mission shall promulgate regulations requiring that the
14 owners or operators of eligible on-site generating facilities
15 and net metering systems comply with uniform national
16 standards, consistent with this section, for the physical
17 connection between such facilities and systems and local
18 distribution systems. At the election of the owner or oper-
19 ator of the generation facility concerned connections meet-
20 ing such standards may be made—

21 “(A) by such owner or operator at such owner’s
22 or operator’s expense, or

23 “(B) by the owner or operator of the local dis-
24 tribution system upon the request of the owner or
25 operator of the generating facility and pursuant to

1 an offer by the owner or operator of the generating
2 facility to reimburse the local distribution system in
3 an amount equal to the minimum cost of such con-
4 nection, consistent with the procurement procedures
5 of the State in which the facility is located.

6 Such standards shall be consistent with all applicable safe-
7 ty and performance standards established by the national
8 electrical code, the Institute of Electrical and Electronics
9 Engineers, or Underwriters Laboratories and with such
10 additional safety and reliability standards as the Commis-
11 sion shall, by rule, prescribe.

12 “(2) The regulations under this section shall establish
13 such measures for the safety and reliability of the affected
14 equipment and local distribution systems as may be appro-
15 priate.

16 “(f) STATE AUTHORITY.—This section does not pre-
17 clude a State from imposing additional requirements con-
18 sistent with the requirements in this section, including the
19 imposition of a cap limiting the amount of net metering
20 available in the State. Nothing in this Act or any other
21 Federal law preempts or otherwise affects authority under
22 State law to require a retail electric supplier to make avail-
23 able net metering service to a retail electric consumer
24 which the supplier serves or offers to serve.”.

1 (c) TABLE OF CONTENTS.—The table of contents for
2 title II of the Public Utility Regulatory Policies Act of
3 1978 (16 U.S.C. 2601 and following) is amended by add-
4 ing the following at the end thereof:

“Sec. 215. Net metering.”.

Page 80, strike line 10 and all that follows down
through line 9 on page 82 and insert:

SEC. 531. PURPA REPEAL.

(a) NEW CONTRACTS.—After the date of enactment
of this Act, no electric utility shall be required to enter
into a new contract or obligation to purchase or to sell
electric energy or capacity pursuant to section 210 of the
Public Utility Regulatory Policies Act of 1978.

(b) EXISTING RIGHTS AND REMEDIES NOT AF-
FECTED.—Nothing in this section affects the rights or
remedies of any party with respect to the purchase or
sale of electric energy or capacity from or to a facility de-
termined to be a qualifying small power production facil-
ity or a qualifying cogeneration facility under section 210
of the Public Utility Regulatory Policies Act of 1978 pur-
suant to any contract or obligation to purchase or to sell
electric energy or capacity in effect on the date of enact-
ment of this Act, including the right to recover the costs
of purchasing such electric energy or capacity.

(c) INTERPRETATIONS AND ACTIONS TAKEN.—
Nothing in this Act may be deemed or construed as im-

plying congressional ratification of any interpretation of, or any action taken pursuant to, the Public Utility Regulatory Policies Act of 1978.

(d) RECOVERY OF COSTS.—In order to assure the sanctity of existing contracts and recovery by electric utilities purchasing electric energy or capacity from a qualifying facility pursuant to any legally enforceable obligation entered into or imposed pursuant to section 210 of the Public Utility Regulatory Policies Act of 1978 prior to the date of enactment of this Act of all costs associated with such purchases, the Commission shall promulgate and enforce such regulations as may be required to assure that an electric utility shall collect the costs associated with such purchases from a qualifying facility upon honoring its obligations under such contracts. Such regulations shall be treated as a rule enforceable under the Federal Power Act (16 U.S.C. 791a–825r).

(e) DEFINITIONS.—For purposes of this section:

(1) The term “Commission” means the Federal Energy Regulatory Commission.

(2) The term “electric utility” means any person, State agency, or Federal agency, which sells electric energy.

(3) The term “qualifying small power production facility” has the same meaning as provided in section 3(17)(C) of the Federal Power Act.

(4) The term “qualifying cogeneration facility” has the same meaning as provided in section 3(18)(A) of the Federal Power Act.

(5) The term “qualifying facility” means either a small power production facility or a qualifying cogeneration facility.

SEC. 1008. DEFINITIONS.

In this title:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) BOARD.—The term “Board” means the National Electric System Public Benefits Board established under section 5.

(3) COMMISSION.—The term “Commission” means the Federal Energy Regulatory Commission.

(4) COGENERATION.—The term “cogeneration” means a process of simultaneously generating electricity and thermal energy in which a portion of the energy value of fuel consumed is recovered as heat that is used to meet heating or cooling loads outside the generation facility.

(5) COVERED ELECTRIC GENERATION FACILITY.—The term “covered electric generation facility” means an electric generation facility (other than a nuclear facility) with a nameplate capacity of 15 megawatts or greater that uses a combustion device to generate electricity for sale.

(6) FUND.—The term “Fund” means the National Electric System Public Benefits Fund established by section 6.

(7) RENEWABLE ENERGY.—The term “renewable energy” means electricity generated from wind, organic waste (excluding incinerated municipal solid waste), or biomass (including anaerobic digestion from farm systems and landfill gas recovery) or a geothermal, solar thermal, or photovoltaic source. For purposes of this paragraph, a farm system is an electric generating facility that generates electric energy from the anaerobic digestion of agricultural waste produced by farming that is located on the farm where substantially all of the waste used is produced.

(8) SECRETARY.—The term “Secretary” means the Secretary of Energy.